



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Industries
File: B-223530
Date: October 15, 1986

DIGEST

1. Agency has taken sufficient steps to advise bidders of expected requirements in a maintenance contract where renovation of the facilities is underway, since the solicitation contains an inventory as of certain date, appraises the bidders of the ongoing renovation and urges bidders to conduct site visits to ascertain actual conditions of performance.
2. Allegations of vague or ambiguous solicitation provisions are rejected where requirements are stated clearly and allegation is based on an unreasonable interpretation of the solicitation.
3. Protest against ambiguous solicitation provisions filed after bid opening is untimely under our Bid Protest Regulations.

DECISION

American Industries (AI) protests alleged defective specifications in invitations for bids (IFB) No. N62474-86-B-B482, issued by the Officer In Charge of Construction, Navy Public Works Center (Navy), San Diego, California. The IFB was issued for basic maintenance of Navy family housing units at Murphy Canyon Heights.

We deny the protest in part and dismiss the remainder.

The IFB was issued on April 10, 1986, and bid opening was held on June 19, 1986. The IFB required that the successful contractor maintain all playground areas in a safe and usable condition including repair or replacement of all playground equipment. Also, the IFB advised that "the inventory of equipment is current as of December 1985" and that

"renovation is scheduled and may be in process at the time this contract is awarded."

AI, the incumbent contractor, contends that on the bid opening date the IFB's inventory of playground equipment was "grossly inaccurate." AI advises that the Navy undertook renovation of the playground areas after December 31, 1985; further, that, as the incumbent contractor, it periodically received notices from the Navy advising of renovations that were made to specific areas, but did not indentify the specific changes made to the playground equipment. AI states that by June 13, 1986, it had determined that the inventory of playground equipment was accurate with respect to only 18 out of 49 playground areas. Therefore, AI protested to the Navy the inaccurate inventory listing which protest the Navy denied on the ground that the inventory was accurately reflected in December 1985. AI contends that it was prejudiced by the inaccurate list because its bid price was based on the actual equipment present.

In response to the protest, the Navy cites several of our decisions for the proposition that there is no requirement that an IFB's specifications give the exact details of performance. See e.g., Richard M. Walsh Associates, Inc., B-216730, May 31, 1985, 85-1 C.P.D. ¶ 621; Crimson Enterprises, Inc., B-209918.2, June 27, 1983, 83-2 C.P.D. ¶ 24. The Navy states that the inventory need not be absolutely correct as long as it was a reasonably accurate representation of the Navy's anticipated actual needs. Richard M. Walsh Associates, Inc., B-216730, *supra*. In this connection, the Navy argues that AI bears the burden of proving that the inventory listing was not based on the best information available or otherwise misrepresented the Navy's needs, citing Yamas Construction Co., Inc., B-217459, May 24, 1985, 85-1 C.P.D. ¶ 599. The Navy advises that the inventory list was based on the best information available at the time the IFB was prepared in December 1985. Therefore, the Navy reports that AI has not met its burden.

Here, we find the Navy took appropriate steps to advise bidders of the expected requirements. The inventory advised bidders of the date it was prepared and contained the caveat that renovation was scheduled and would continue up to the time of award. Moreover, the IFB urged bidders to conduct a site visit to ascertain the actual conditions of performance. Since renovation was continuous, the inventory would have had to have been updated on a weekly basis and forwarded to the bidders as an amendment to the IFB. We do not believe such action is required.

Additionally, AI alleges that paragraphs 2.3.1.4 and 2.7.1.1 of section C3, Annex 2, of the IFB as interpreted by the Navy were misleading and caused bidders to submit much lower prices than necessary to perform the work. Paragraph 2.3.1.4 states that "water leaks caused by ruptured pipe fittings, cause ceilings and walls to fail at an average rate of 3 per month" and paragraph 2.7.1.1 states that "defects in the plumbing system cause joints in walls and ceilings to fail at a rate of 30 per month." The Navy reports that its records indicate that plumbing joints fail at a rate of approximately 30 per month and normally are identified in time to preclude substantial damage; although in some instances the leaks are undetected until the wall and ceiling assembly fails, which occurs approximately 3 times per month. Thus, the Navy reports that the specifications are consistent with its records, which were compiled from information provided by AI. AI maintains that the two paragraphs address the same issue and that the failure rate of ceiling and wall joints is in excess of 30 units per month, not 3 times per month as the Navy argues.

Our Office will reject allegations concerning vague or ambiguous solicitation provisions where those allegations are based on an unreasonable interpretation of the solicitation and the requirements are stated clearly. H.L. Carpenter Company, B-220032, Nov. 21, 1985, 85-2 C.P.D. ¶ 586. We find that the Navy's interpretation and reading of paragraphs 2.3.1.4 and 2.7.1.1 was reasonable. Although AI disputes the failure rate reported by the Navy, it has not presented any evidence, save its own allegation, that would cause us to question the Navy's record of the failure rate. Moreover, AI has not shown how bidders were prejudiced in preparing their bids. Therefore, we deny this aspect of the protest.

Finally, AI contends that paragraph 1.12.1 of section C3, Annex 1, which sets out liability limits for service calls and scheduled repairs, was ambiguous. We will not consider this allegation because it was untimely filed. AI raised this issue for the first time in its protest with our Office; therefore, it must independently satisfy our timeliness requirements. Our Bid Protest Regulations require that protests based upon alleged solicitation improprieties which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1986). This issue was filed in our office after the bid opening on July 2, 1986, and involves a matter that was apparent from the face of the IFB prior to bid opening. Therefore, we dismiss the allegation as untimely.

The protest is denied in part and dismissed in part.

for Seymour Efron
Harry R. Van Cleve
General Counsel